

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SADDLE MOUNTAIN MINERALS,
LLC,

Plaintiff,

v.

CITY OF RICHLAND, a municipal
corporation of the State of Washington,

Defendant.

CASE NO. 4:22-CV-05055-TOR

**STIPULATED
PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with this court's rules. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible
3 things produced or otherwise exchanged: income statements, balance sheets, profit
4 and loss statements, corporate federal and state tax returns, depreciation schedules,
5 and detailed general ledger reports of expenses and income for Saddle Mountain
6 Minerals, L.L.C. and all current and former members and managers of Saddle
7 Mountain Minerals, L.L.C..

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential
10 material (as defined above), but also (1) any information copied or extracted from
11 confidential material; (2) all copies, excerpts, summaries, or compilations of
12 confidential material; and (3) any testimony, conversations, or presentations by
13 parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover
15 information that is in the public domain or becomes part of the public domain
16 through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that
19 is disclosed or produced by another party or by a non-party in connection with this
20 case only for prosecuting, defending, or attempting to settle this litigation.
21 Confidential material may be disclosed only to the categories of persons and under
22 the conditions described in this agreement. Confidential material must be stored
23 and maintained by a receiving party at a location and in a secure manner that
24 ensures that access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the designating party, a
3 receiving party may disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as
5 employees of counsel to whom it is reasonably necessary to disclose the
6 information for this litigation;

7 (b) the officers, directors, and employees (including in house
8 counsel) of the receiving party to whom disclosure is reasonably necessary for this
9 litigation, unless the parties agree that a particular document or material produced
10 is for Attorney’s Eyes Only and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably
12 necessary for this litigation and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the
16 duplication of confidential material, provided that counsel for the party retaining
17 the copy or imaging service instructs the service not to disclose any confidential
18 material to third parties and to immediately return all originals and copies of any
19 confidential material;

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the “Acknowledgment and
22 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
23 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
24 to depositions that reveal confidential material must be separately bound by the
25 court reporter and may not be disclosed to anyone except as permitted under this
26 agreement;

1 (g) the author or recipient of a document containing the
2 information or a custodian or other person who otherwise possessed or knew the
3 information.

4 4.3 Filing Confidential Material. Before filing confidential material or
5 discussing or referencing such material in court filings, the filing party shall confer
6 with the designating party to determine whether the designating party will remove
7 the confidential designation, whether the document can be redacted, or whether a
8 motion to seal or stipulation and proposed order is warranted. During the meet and
9 confer process, the designating party must identify the basis for sealing the specific
10 confidential information at issue, and the filing party shall include this basis in its
11 motion to seal, along with any objection to sealing the information at issue.
12 Failure to satisfy this requirement will result in the motion to seal being denied, in
13 accordance with the strong presumption of public access to the Court's files.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.
16 Each party or non-party that designates information or items for protection under
17 this agreement must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. The designating party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify, so that other portions of the material, documents,
21 items, or communications for which protection is not warranted are not swept
22 unjustifiably within the ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an improper
25 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
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1 to impose unnecessary expenses and burdens on other parties) expose the
2 designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it
4 designated for protection do not qualify for protection, the designating party must
5 promptly notify all other parties that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as
8 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
9 protection under this agreement must be clearly so designated before or when the
10 material is disclosed or produced.

11 (a) Information in documentary form: (*e.g.*, paper or electronic
12 documents and deposition exhibits, but excluding transcripts of depositions or
13 other pretrial or trial proceedings), the designating party must affix the word
14 "CONFIDENTIAL" to each page that contains confidential material. If only a
15 portion or portions of the material on a page qualifies for protection, the producing
16 party also must clearly identify the protected portion(s) (*e.g.*, by making
17 appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial proceedings:
19 the parties and any participating non-parties must identify on the record, during the
20 deposition or other pretrial proceeding, all protected testimony, without prejudice
21 to their right to so designate other testimony after reviewing the transcript. Any
22 party or non-party may, within fifteen days after receiving the transcript of the
23 deposition or other pretrial proceeding, designate portions of the transcript, or
24 exhibits thereto, as confidential. If a party or non-party desires to protect
25 confidential information at trial, the issue should be addressed during the pre-trial
26 conference.

1 (c) Other tangible items: the producing party must affix in a
2 prominent place on the exterior of the container or containers in which the
3 information or item is stored the word “CONFIDENTIAL.” If only a portion or
4 portions of the information or item warrant protection, the producing party, to the
5 extent practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the designating party’s right to secure protection under this agreement for such
9 material. Upon timely correction of a designation, the receiving party must make
10 reasonable efforts to ensure that the material is treated in accordance with the
11 provisions of this agreement.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a
14 designation of confidentiality at any time. Unless a prompt challenge to a
15 designating party’s confidentiality designation is necessary to avoid foreseeable,
16 substantial unfairness, unnecessary economic burdens, or a significant disruption
17 or delay of the litigation, a party does not waive its right to challenge a
18 confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must make every attempt to resolve any
21 dispute regarding confidential designations without court involvement. Any motion
22 regarding confidential designations or for a protective order must include a
23 certification, in the motion or in a declaration or affidavit, that the movant has
24 engaged in a good faith meet and confer conference with other affected parties in
25 an effort to resolve the dispute without court action. The certification must list the
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1 date, manner, and participants to the conference. A good faith effort to confer
2 requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
4 court intervention, the designating party may file and serve a motion to retain
5 confidentiality. The burden of persuasion in any such motion shall be on the
6 designating party. Frivolous challenges, and those made for an improper purpose
7 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the challenging party to sanctions. All parties shall continue to maintain the
9 material in question as confidential until the court rules on the challenge.

10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

12 If a party is served with a subpoena, a motion for a court order issued in
13 other litigation to compel disclosure of any information or items designated in this
14 action as “CONFIDENTIAL,” or a request under the Washington Public Records
15 Act, that party must:

16 (a) promptly notify the designating party in writing and include a
17 copy of the subpoena, motion, court order or request under the Washington Public
18 Records Act;

19 (b) promptly notify in writing the party who caused the subpoena
20 or order to issue in the other litigation that some or all of the material covered by
21 the subpoena or order is subject to this agreement. Such notification shall include a
22 copy of this agreement;

23 (c) cooperate with respect to all reasonable procedures sought to be
24 pursued by the designating party whose confidential material may be affected; and
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(d) in regard to a request under the Washington Public Records Act, not release the information marked CONFIDENTIAL without the consent of the designating party or a court order.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival
2 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
3 correspondence, deposition and trial exhibits, expert reports, attorney work
4 product, and consultant and expert work product, even if such materials contain
5 confidential material.

6 The confidentiality obligations imposed by this agreement shall remain in
7 effect until a designating party agrees otherwise in writing or a court orders
8 otherwise.

9
10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: October 19, 2022 /s/Kenneth W. Harper, WSBA #25578
12 Attorneys for Plaintiff

13 DATED: October 19, 2022 /s/Richard M. Stephens, WSBA #21776
14 Attorneys for Defendant

15 PURSUANT TO STIPULATION, IT IS SO ORDERED

16 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
17 production of any documents in this proceeding shall not, for the purposes of this
18 proceeding or any other federal or state proceeding, constitute a waiver by the
19 producing party of any privilege applicable to those documents, including the
20 attorney-client privilege, attorney work-product protection, or any other privilege
21 or protection recognized by law.

22 DATED: October 21, 2022.





The Honorable Thomas O. Rice
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of Washington on [date] in the case of Saddle Mountain
Minerals, LLC v. City of Richland, No. 4:22-CV-05055-TOR.

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____